

FORM D

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL
OMB Number: 3235-0076
Expires: May 31, 2005
Estimated average burden hours per response...16.00

FORM D
NOTICE OF SALE OF SECURITIES
PURSUANT TO REGULATION D,
SECTION 4(6), AND/OR
UNIFORM LIMITED OFFERING EXEMPTION



03035129

| SEC USE ONLY | | |
|---------------|--|--------|
| Prefix | | Serial |
| DATE RECEIVED | | |
| | | |

Name of Offering (check if this is an amendment and name has changed, and indicate change.)
Offering of Mpower Holding Corporation common stock and warrants

Filing Under (Check box(es) that apply) ☐ Rule 504 ☐ Rule 505 ☒ Rule 506 ☐ Section 4(6) ☐ ULOE
Type of Filing: ☒ New Filing ☐ Amendment

A. BASIC IDENTIFICATION DATA

1. Enter the information requested about the issuer

Name of Issuer (☐ check if this is an amendment and name has changed, and indicate change.)
Mpower Holding Corporation

Address of Executive Offices (Number and Street, City, State, Zip Code)
175 Sully's Trail Suite 300 Pittsford, NY 14534

Telephone Number (Including Area Code)
(585) 218-6550

Address of Principal Business Operations (Number and Street, City, State, Zip Code)
(if different from Executive Offices)

Telephone Number (Including Area Code)

Brief Description of Business- **Mpower provides integrated voice and high-speed data services to small and medium-sized business customers in five markets throughout California and in Las Vegas, Nevada and Chicago, Illinois.**

Type of Business Organization

☒ corporation ☐ limited partnership, already formed ☐ other (please specify):
☐ business trust ☐ limited partnership, to be formed

Actual or Estimated Date of Incorporation or Organization **October 1995** ☒ Actual ☐ Estimated
Jurisdiction of Incorporation or Organization: (Enter two-letter U.S. Postal Service abbreviation for State: DE
CN for Canada; FN for other foreign jurisdiction)

PROCESSED**OCT 16 2003****THOMSON
FINANCIAL****GENERAL INSTRUCTIONS****Federal:**

Who Must File: All issuers making an offering of securities in reliance on an exemption under Regulation D or Section 4(6), 17 CFR 230.501 et seq. or 15 U.S.C. 77d(6).

When to File: A notice must be filed no later than 15 days after the first sale of securities in the offering. A notice deemed filed with the U.S. Securities and Exchange Commission (SEC) on the earlier of the date it is received by the SEC at the address given below or, if received at that address after the date on which it is due, on the date it was mailed by United States registered or certified mail to that address.

Where to File: U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Copies Required: Five (5) copies of this notice must be filed with the SEC, one of which must be manually signed. Any copies not manually signed must be photocopies of manually signed copy or bear typed or printed

Information Required: A new filing must contain all information requested. Amendments need only report the name of the issuer and offering, any changes thereto, the information requested in Part C, and any material changes from the information previously supplied in Parts A and B. Part E and the Appendix need not be filed with the SEC.

Filing Fee: There is no federal filing fee.

State:

This notice shall be used to indicate reliance on the Uniform Limited Offering Exemption (ULOE) for sales of securities in those states that have adopted ULOE and that have adopted this form. Issuers relying on ULOE file a separate notice with the Securities Administrator in each state where sales are to be, or have been made. If a state requires the payment of a fee as a precondition to the claim for the exemption, a fee in the proper amount shall accompany this form. This notice shall be filed in the appropriate states in accordance with state law. The Appendix in the notice constitutes a part of this notice and must be completed.

ATTENTION

Failure to file notice in the appropriate states will not result in a loss of the federal exemption. Conversely, failure to file the appropriate federal notice will not result in a loss of an available state exemption state exemption unless such exemption is predicated on the filing of a federal notice.

A. BASIC IDENTIFICATION DATA

2. Enter the information requested for the following:

- Each promoter of the issuer, if the issuer has been organized within the past five years;
- Each beneficial owner having the power to vote or dispose, or direct the vote or disposition of, 10% or of a class of equity securities of the issuer;
- Each executive officer and director of corporate issuers and of corporate general and managing partners of partnership issuers; and
- Each general and managing partnership issuers.

| | | | | | |
|---------------------------|-----------------------------------|--|--|---|--|
| Check Box(es) that Apply: | <input type="checkbox"/> Promoter | <input checked="" type="checkbox"/> Beneficial Owner | <input type="checkbox"/> Executive Officer | <input type="checkbox"/> Director Managing Member of the General Partner | <input type="checkbox"/> General and/or Managing Partner |
|---------------------------|-----------------------------------|--|--|---|--|

Full Name (Last name first, if individual)

West Highland Capital, Inc.

Business or Residence Address (Number and Street, City, State, Zip Code)

300 Drake's Landing Road, Suite 290, Greenbrae, CA 94904

| | | | | | |
|---------------------------|-----------------------------------|---|---|--|---|
| Check Box(es) that Apply: | <input type="checkbox"/> Promoter | <input type="checkbox"/> Beneficial Owner | <input checked="" type="checkbox"/> Executive Officer | <input checked="" type="checkbox"/> Director | <input type="checkbox"/> General and/or Managing Partner |
|---------------------------|-----------------------------------|---|---|--|---|

Full Name (Last name first, if individual)

Huff, Rolla P.

Business or Residence Address (Number and Street, City, State, Zip Code)

c/o Mpower Holding Corporation

175 Sully's Trail, Suite 300, Pittsford, NY 14534

| | | | | | |
|---------------------------|-----------------------------------|---|--|-----------------------------------|---|
| Check Box(es) that Apply: | <input type="checkbox"/> Promoter | <input type="checkbox"/> Beneficial Owner | <input checked="" type="checkbox"/> Executive Officer | <input type="checkbox"/> Director | <input type="checkbox"/> General and/or Managing Partner |
|---------------------------|-----------------------------------|---|--|-----------------------------------|---|

Full Name (Last name first, if individual)

Wetzel, Joseph M.

Business or Residence Address (Number and Street, City, State, Zip Code)

c/o Mpower Holding Corporation

175 Sully's Trail, Suite 300, Pittsford, NY 14534

| | | | | | |
|---------------------------|-----------------------------------|---|--|-----------------------------------|---|
| Check Box(es) that Apply: | <input type="checkbox"/> Promoter | <input type="checkbox"/> Beneficial Owner | <input checked="" type="checkbox"/> Executive Officer | <input type="checkbox"/> Director | <input type="checkbox"/> General and/or Managing Partner |
|---------------------------|-----------------------------------|---|--|-----------------------------------|---|

Full Name (Last name first, if individual)

Clevenger, S. Gregory

Business or Residence Address (Number and Street, City, State, Zip Code)

c/o Mpower Holding Corporation

175 Sully's Trail, Suite 300, Pittsford, NY 14534

| | | | | | |
|---------------------------|-----------------------------------|---|--|-----------------------------------|---|
| Check Box(es) that Apply: | <input type="checkbox"/> Promoter | <input type="checkbox"/> Beneficial Owner | <input checked="" type="checkbox"/> Executive Officer | <input type="checkbox"/> Director | <input type="checkbox"/> General and/or Managing Partner |
|---------------------------|-----------------------------------|---|--|-----------------------------------|---|

Full Name (Last name first, if individual)

Zuckerman, Russell I.

Business or Residence Address (Number and Street, City, State, Zip Code)

c/o Mpower Holding Corporation

175 Sully's Trail, Suite 300, Pittsford, NY 14534

| | | | | | |
|---------------------------|-----------------------------------|---|--|-----------------------------------|---|
| Check Box(es) that Apply: | <input type="checkbox"/> Promoter | <input type="checkbox"/> Beneficial Owner | <input checked="" type="checkbox"/> Executive Officer | <input type="checkbox"/> Director | <input type="checkbox"/> General and/or Managing Partner |
|---------------------------|-----------------------------------|---|--|-----------------------------------|---|

Full Name (Last name first, if individual)

Ferguson, James E.

Business or Residence Address (Number and Street, City, State, Zip Code)

c/o Mpower Holding Corporation

175 Sully's Trail, Suite 300, Pittsford, NY 14534

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☒ Executive Officer ☐ Director
Managing Member ☐ General and/or
of the General Managing
Partner Partner

Full Name (Last name first, if individual)

Marion Jr., Anthony M.

Business or Residence Address (Number and Street, City, State, Zip Code)

c/o Mpower Holding Corporation

175 Sully's Trail, Suite 300, Pittsford, NY 14534

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☒ Executive Officer ☐ Director ☐ General and/or
Managing Partner

Full Name (Last name first, if individual)

Pachuta, Roger A.

Business or Residence Address (Number and Street, City, State, Zip Code)

c/o Mpower Holding Corporation

175 Sully's Trail, Suite 300, Pittsford, NY 14534

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☒ Executive
Officer ☐ Director ☐ General and/or
Managing Partner

Full Name (Last name first, if individual)

Reimer, Steven A.

Business or Residence Address (Number and Street, City, State, Zip Code)

c/o Mpower Holding Corporation

175 Sully's Trail, Suite 300, Pittsford, NY 14534

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☒ Executive
Officer ☐ Director ☐ General and/or
Managing Partner

Full Name (Last name first, if individual)

Sadwick, Michele D.

Business or Residence Address (Number and Street, City, State, Zip Code)

c/o Mpower Holding Corporation

175 Sully's Trail, Suite 300, Pittsford, NY 14534

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☒ Executive
Officer ☐ Director ☐ General and/or
Managing Partner

Full Name (Last name first, if individual)

Shipley, Russell A.

Business or Residence Address (Number and Street, City, State, Zip Code)

c/o Mpower Holding Corporation

175 Sully's Trail, Suite 300, Pittsford, NY 14534

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☒ Executive
Officer ☐ Director ☐ General and/or
Managing Partner

Full Name (Last name first, if individual)

Tschiderer, Michael J.

Business or Residence Address (Number and Street, City, State, Zip Code)

c/o Mpower Holding Corporation

175 Sully's Trail, Suite 300, Pittsford, NY 14534

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☒ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Cassara, Anthony J.

Business or Residence Address (Number and Street, City, State, Zip Code)

c/o Mpower Holding Corporation

175 Sully's Trail, Suite 300, Pittsford, NY 14534

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☒ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Cahr, Michael E.

Business or Residence Address (Number and Street, City, State, Zip Code)

c/o Mpower Holding Corporation

175 Sully's Trail, Suite 300, Pittsford, NY 14534

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☒ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Earley, Michael M.

Business or Residence Address (Number and Street, City, State, Zip Code)

c/o Mpower Holding Corporation

175 Sully's Trail, Suite 300, Pittsford, NY 14534

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☒ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Pomeroy, Robert M.

Business or Residence Address (Number and Street, City, State, Zip Code)

c/o Mpower Holding Corporation

175 Sully's Trail, Suite 300, Pittsford, NY 14534

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☒ Director ☐ General and/or Managing Partner

Full Name (Last name first, if individual)

Shorten, Richard L.

Business or Residence Address (Number and Street, City, State, Zip Code)

c/o Mpower Holding Corporation

175 Sully's Trail, Suite 300, Pittsford, NY 14534

Check Box(es) that Apply: ☐ Promoter ☐ Beneficial Owner ☐ Executive Officer ☐ Director ☐ General and/or Managing Partner

B. INFORMATION ABOUT OFFERING

1. Has the issuer sold, or does the issuer intend to sell, to non-accredited investors in this offering? Yes No
Answer also in Appendix, Column 2, if filing under ULOE. [] [X]

2. What is the minimum investment that will be accepted from any individual? **No minimum**

3. Does the offering permit joint ownership of a single unit? Yes No
[] [X]

4. Enter the information requested for each person who has been or will be paid or given, directly or indirectly, any commission or similar remuneration for solicitation of purchasers in connection with sales of securities in the offering. If a person to be listed is an associated person or agent of a broker or dealer registered with the SEC and/or with a state or states, list the name of the broker or dealer. If more than five (5) persons to be listed are associated persons of such a broker or dealer, you may set forth the information for that broker or dealer only.

Full Name (Last name first, if individual)

Michael Richard Jacks

Business or Residence Address (Number and Street, City, State, Zip Code)

**601 California St. Suite 1150
San Francisco, CA 94108**

Name of Associated Broker or Dealer

The Shemano Group, Inc.

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States) [] All States

| | | | | | | | | | | | | |
|------|------|------|------|------|------|------|------|------|------|------|------|------|
| [AL] | [AK] | [AZ] | [AR] | [CA] | [CO] | [CT] | [DE] | [DC] | [FL] | [GA] | [HI] | [ID] |
| [IL] | [IN] | [IA] | [KS] | [KY] | [LA] | [ME] | [MD] | [MA] | [MI] | [MN] | [MS] | [MO] |
| [MT] | [NE] | [NV] | [NH] | [NJ] | [NM] | [NY] | [NC] | [ND] | [OH] | [OK] | [OR] | [PA] |
| [RI] | [SC] | [SD] | [TN] | [TX] | [UT] | [VT] | [VA] | [WA] | [WV] | [WI] | [WY] | [PR] |

Full Name (Last name first, if individual)

Pacific Alliance Limited, LLC

Business or Residence Address (Number and Street, City, State, Zip Code)

1370 Sixth Ave., Suite 902, New York, NY 10019

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States) [] All States

| | | | | | | | | | | | | |
|------|------|------|------|------|------|------|------|------|------|------|------|------|
| [AL] | [AK] | [AZ] | [AR] | [CA] | [CO] | [CT] | [DE] | [DC] | [FL] | [GA] | [HI] | [ID] |
| [IL] | [IN] | [IA] | [KS] | [KY] | [LA] | [ME] | [MD] | [MA] | [MI] | [MN] | [MS] | [MO] |
| [MT] | [NE] | [NV] | [NH] | [NJ] | [NM] | [NY] | [NC] | [ND] | [OH] | [OK] | [OR] | [PA] |
| [RI] | [SC] | [SD] | [TN] | [TX] | [UT] | [VT] | [VA] | [WA] | [WV] | [WI] | [WY] | [PR] |

Full Name (Last name first, if individual)

Business or Residence Address (Number and Street, City, State, Zip Code)

Name of Associated Broker or Dealer

States in Which Person Listed Has Solicited or Intends to Solicit Purchasers

(Check "All States" or check individual States) [] All States

| | | | | | | | | | | | | |
|------|------|------|------|------|------|------|------|------|------|------|------|------|
| [AL] | [AK] | [AZ] | [AR] | [CA] | [CO] | [CT] | [DE] | [DC] | [FL] | [GA] | [HI] | [ID] |
| [IL] | [IN] | [IA] | [KS] | [KY] | [LA] | [ME] | [MD] | [MA] | [MI] | [MN] | [MS] | [MO] |
| [MT] | [NE] | [NV] | [NH] | [NJ] | [NM] | [NY] | [NC] | [ND] | [OH] | [OK] | [OR] | [PA] |
| [RI] | [SC] | [SD] | [TN] | [TX] | [UT] | [VT] | [VA] | [WA] | [WV] | [WI] | [WY] | [PR] |

C. OFFERING PRICE, NUMBER OF INVESTORS, EXPENSES AND USE OF PROCEEDS

1. Enter the aggregate offering price of securities included in this offering and the total amount already sold. Enter "0" if answer is "none" or "zero."

If the transaction is an exchange offering, check this box ☐ and indicate in the columns below the amounts of the securities offered for exchange and already exchanged.

| Type of Security | Aggregate Offering Price | Amount Already Sold |
|---|-----------------------------|------------------------|
| Debt | \$ 0 | \$ 0 |
| Equity | \$17,470,000 | \$17,470,000 |
| <input checked="" type="checkbox"/> Common <input type="checkbox"/> Preferred | | |
| Convertible Securities (including warrants)..... | \$ 0* | \$ 0* |
| Partnership Interests..... | \$ 0 | \$ 0 |
| Other (Warrants to purchase common shares). | \$ 0 | \$ 0 |
| Total | \$17,470,000 | \$17,470,000 |

Answer also in Appendix, Column 3, if filing under ULOE.

*Warrants to purchase 2,588,148 common shares at a price of \$1.62 were issued in the private placement. All purchasers of the common shares received warrants for no additional consideration. Up to an additional \$4,192,799.70 could be received in the future if the warrants issued are exercised.

2. Enter the number of accredited and non-accredited investors who purchased securities in this offering and the aggregate dollar amounts of their purchases. For offerings under Rule 504, indicate the number of persons who have purchased securities and the aggregate dollar amount of their purchases on the total lines. Enter "0" if answer is "none" or "zero."

| | Number Investors | Aggregate Dollar Amount of Purchases |
|--|---------------------|--|
| Accredited Investors..... | 23 | \$17,470,000 |
| Non-accredited Investors..... | | \$ |
| Total (for filings under Rule 504 only)..... | | \$ |

Answer also in Appendix, Column 4, if filing under ULOE.

3. If this filing is for an offering under Rule 504 or 505, enter the information requested for all securities sold by the issuer, to date, in offerings of the types indicated, the twelve (12) months prior to the first sale of securities in this offering. Classify securities by type listed in Part C-Question 1.

| Type of offering | Type of Security | Dollar Amount Sold |
|---------------------------|------------------|-----------------------|
| Rule 505 | | \$ |
| <u>Regulation A</u> | | \$ |
| Rule 504 | | \$ |
| Total | | \$ |

4.a. Furnish a statement of all expenses in connection with the issuance and distribution of the securities in this offering. Exclude amounts relating solely to organization expenses of the issuer. The information may be given as subject to future contingencies. If the amount of an expenditure is not known, furnish an estimate and check the box to the left of the estimate.

| | | |
|--|--------------------------|-----------------|
| Transfer Agent's Fees..... | <input type="checkbox"/> | \$10,000 |
| Printing and Engraving Costs..... | <input type="checkbox"/> | \$15,000 |
| Legal Fees..... | <input type="checkbox"/> | \$150,000 |
| Accounting Fees..... | <input type="checkbox"/> | \$10,000 |
| Engineering Fees..... | <input type="checkbox"/> | \$ N/A |
| Sales Commissions (specify finders' fees separately) | <input type="checkbox"/> | \$ - |
| Other Expenses (identify) <u>Finders' Fees</u> | <input type="checkbox"/> | \$1,270,228.80* |
| Total..... | | \$1,455,228.80 |

*The Shemano Group, Inc. also received warrants to purchase 349,400 common shares @ \$1.62 as part of its finders fee. In addition, Shemano is entitled to receive up to 1) 83,856 warrants @ \$1.62 and 2) \$251,568 in additional cash, contingent on the issuer's receipt of proceeds from the Investors' exercise of their warrants. In the event that the Shemano Group, Inc. exercises all of the aforementioned warrants, Mpower will receive \$701,875 in additional proceeds.

C. OFFERING PRICE, NUMBER OF INVESTORS, EXPENSES AND USE OF PROCEEDS

b. Enter the difference between the aggregate offering price given in response to Part C-Question 1 and total expenses furnished in response to Part C-Questions 4.a.


This difference is the "adjusted gross proceeds to the issuer." \$ 16,014,771

5. Indicate below the amount of the adjusted gross proceeds to the issuer used or proposed to be used for each of the purposes shown. If the amount for any purpose is not known, furnish an estimate and check the box to the left of the estimate. The total of the payments listed must equal the adjusted gross proceeds to the issuer set forth in response to Part C-Question 4.b above.

| | Payments to Officers, Directors, & Affiliates | Payments To Others |
|---|---|---|
| Salaries and fees (finders fees, legal fees, expenses)..... | <input type="checkbox"/> \$ _____ | <input type="checkbox"/> \$ _____ |
| Purchase of real estate..... | <input type="checkbox"/> \$ _____ | <input type="checkbox"/> \$ _____ |
| Purchase, rental or leasing and installation of machinery and equipment..... | <input type="checkbox"/> \$ _____ | <input type="checkbox"/> \$ _____ |
| Construction or leasing of plant buildings and facilities..... | <input type="checkbox"/> \$ _____ | <input type="checkbox"/> \$ _____ |
| Acquisition of other businesses (including the value of securities involved in this offering that may be used in exchange for the assets or securities of another issuer pursuant to a merger)..... | <input type="checkbox"/> \$ _____ | <input type="checkbox"/> \$ _____ |
| Repayment of indebtedness..... | <input type="checkbox"/> \$ _____ | <input type="checkbox"/> \$ _____ |
| Working capital..... | <input type="checkbox"/> \$ _____ | <input type="checkbox"/> \$ _____ |
| Other (specify): investment in additional sales, installation and product enhancements and effectuate strategic transactions | <input type="checkbox"/> \$ _____ | <input checked="" type="checkbox"/> \$ 16,014,771 |
| Column Totals..... | <input type="checkbox"/> \$ _____ | <input checked="" type="checkbox"/> \$ 16,014,771 |
| Total Payments Listed (column totals added)..... | \$ 16,014,771 | |

D. FEDERAL SIGNATURE

The issuer has duly caused this notice to be signed by the undersigned duly authorized person. If this notice is filed under Rule 505, the following signature constitutes an undertaking by the issuer to furnish to the U.S. Securities and Exchange Commission, upon written request of its staff, the information furnished by the issuer to any non-accredited investor pursuant to paragraph (b)(2) of Rule 502.

| | | |
|---|---|-------------------------|
| Issuer (Print or Type) Mpower Holding Corporation | Signature  | Date October 9, 2003 |
| Name of Signer (Print or Type) Russell I. Zuckerman | Title (Print or Type) Senior Vice President, General Counsel & Secretary | |

ATTENTION

Intentional misstatements or omissions of fact constitute federal crime violations. (See 18 U.S.C. 1001.)